

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 1483 of 2019
Date of First hearing: 13.08.2019
Date of decision : 17.09.2019

1. Mrs. Urvashi Talwar
2. Mrs. Sonal Kumar
R/o 1069, Sector-15B, Chandigarh

Complainants

Versus

M/s Emaar MGF Land Ltd.,
Address: Emaar Business Park, Mehrauli
Gurgaon Road, Near Sikanderpur Metro
Station Gate no.1, Sector-28, Mehrauli
Sikanderpur Chowk,
Gurugram, Haryana-122002
Also at: ECE house 28, Kasturba Gandhi
Marg, New-Delhi-110001

Respondent

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

[Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th
July 2019 U/s 81 of the Real Estate (Regulation and Development)
Act, 2016]

APPEARANCE:

Ms. Priyanaka Aggarwal
Shri Ishaan Dang

Representative for the complainant
Advocate for the ex-parte respondent

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EXPARTE ORDER

1. The present complaint filed on 22.04.2019 relates to a buyer's agreement dated 18.03.2011 executed between the complainants and the respondent promoter, registered with this Authority vide registration no. 307 of 2017 dated 17.10.2017, in respect of villa measuring 6520 sq. ft. constructed on 350 sq. yd. plot bearing no. MAR-MD-01B(Basement,Ground+2) of the project, namely "Marbella" situated in Sector 65-66, Gurugram (in short, the subject villa) for a sale price of Rs. 6,13,66,888/- [including taxes] and the complainants opted for subvention scheme.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Marbella", Sectors 65-66, Gurugram.
2.	DTCP license no.	228 of 2007 dated 27.09.2007
3.	Nature of real estate project	Group housing complex
4.	Villa/unit no.	MAR-MD-01B
5.	Area of villa	6520 sq. ft (as per page 15 of complaint)
6.	RERA Registered/ unregistered	307 of 2017 dated 17.10.2017
7.	Date of execution of buyer's agreement	18.03.2011 (Page 12 of complaint)
8.	Payment Plan	Subvention plan (Pg.32 of the complaint)



9.	Total consideration	Rs. 6,13,66,888/- (as per statement of account as on 28.02.2019, Pg.39 of the complaint)
10.	Total amount paid by the complainants till date	Rs.5,92,31,029/- as per details given in the complaint. Rs. 6,21,99,745/- (as per statement of account as on 28.02.2019, Pg.39 of the complaint)
11.	Due date of delivery of possession as per possession clause 10 of the agreement dated 18.03.2011	27.01.2015 (Note – company proposes to hand over the possession of villa within 30 months from commencement of development work + 3 months grace period i.e.27.04.2012, page 39)
12.	Date of offer of possession letter	14.12.2018 (Page 45 of complaint)
13.	Delay in handing over possession	3 years 10 months 17 days

3. As per clause 10 of the agreement, the respondent had agreed to handover the possession of the subject villa to the complainants by 27.01.2015, including the additional grace period of 3 months for applying and obtaining the occupation certificate.
4. It is stated that the one-sided development agreement has been one of the core concerns of home buyers as the terms are non-negotiable and has been unfairly exploited by the builder



with no option to modify it. It is further stated that for delay in instalment penalty on buyer is 24% and compensation for delay in offering possession is Rs.10/- per sq. ft. which is arbitrary, biased and discriminatory.

5. Complainants have stated that the flat buyer's agreement was executed on 18.03.2011 for the subject villa and till date they have paid Rs.5,92,31,029/- against a total sale consideration of Rs.6,13,66,888/-. According to the complainants the development work started on 27.04.2012. The respondent had to offer possession before 27.01.2015 but offer of possession was offered vide letter dated 14.12.2018 i.e. after a delay of approximately 3 years 10 months 17 days from the committed date of possession. Paras 8 and 9 of the complaint read as under:-

"8. That the builder was offered the possession on dated 14.12.2018 and project was delayed approx 3 years 9 months. At the time of offer of possession builder adjusted the delay penalty @Rs.10/- sq. ft. per months (from handing over date 27.01.2015 to 14.12.2018). In case of delay instalment builder charged the penalty @24% annum and in delay in possession give the Rs.10/- sq. ft. this illegal arbitrary, unilateral and discriminatory....."

9. *That the complainants had paid before time and more amount as demanded by builder most of time still on small delay builder demanded penalty Rs.13,192, Rs.46,173 and Rs.70 @24% and same paid by the complainants. Builder not paid any pre deposit discount/compensation/interest....."*
6. The complainants by way of complaint are demanding the delay penalty charges and do not intend to withdraw from the project.
7. Hence, this complaint.
8. The following issues have been raised to be decided by the Authority: -
- "1. Whether the respondent has breached the provisions of the Act as well as the agreement by not completing the construction of the said unit in time bound manner?
2. Whether the respondent has breached the term of agreement, as per term of buyer's agreement, builder had committed in the BA clause no.10(a) and was accordingly obliged and liable to give possession of said unit before 27.01.2015 but offered the possession on 14.12.2018?

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3. Whether builder charged the penalty @24% annum and in delay in possession give the Rs.10 per sq. ft. This illegal arbitrary, unilateral and discriminatory.
4. Whether the term of executed buyer's agreement are one sided, illegal, arbitrary, unilateral and discriminatory?
5. Whether the respondent is liable to delay penalty @24% per annum?"

7. The reliefs sought are detailed as under: -

- "1. To direct the respondent to hand over the physical possession of unit in habitable condition.
 2. Direct the respondent to pay delay interest on paid amount of Rs.5,92,31,029/- from 27.01.2015 along with pendent lite and future interest till physical possession thereon @24% as charged by builder.
8. Notice of the complaint has been issued to the respondent by speed post and also on given email addresses at coordination@emaarmgf.com, coordination@emaar-india.com and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Accordingly,

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the Authority is left with no other option but to decide the complaint exparte against the respondent. Respondent has been proceeded exparte vide order dated 13.08.2019.

Reply to the complaint filed thereafter has been taken on record subject to all just exceptions and is not being considered in view of the judgment reported as AIR 1964 SC 993.

Arguments heard.

It is submitted on behalf of respondent that the complainants have already been given the credit of Rs.30,35,283/- in the offer of possession letter and hence this amount may be taken into account while passing the final order.

Issue wise findings of the Authority: -

9. **All issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the buyer's agreement, there is every reason to believe that vide the buyer's agreement dated 18.03.2011 the respondent had agreed to handover the possession of the subject villa to the complainants within 30 months from the date of start of development work (i.e.27.04.2012) by 27.01.2015 with the additional grace

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period of 3 months, which in other words, means that the respondent was bound to offer the physical possession of the subject villa to the complainants on or before 27.01.2015. However, the offer of possession letter has been placed on the file which clearly proves that the offer of possession of the subject villa was offered to the complainants on 14.12.2018 which further clearly shows that the respondent had caused delay of more than 3 years 10 months in offering possession of the subject villa to the complainants. Hence, it is held that there was a delay of about 3 years 10 months in offering the possession of the subject villa to the complainants.

10. However, as per the averments made in the complaint and not controverted by the respondent, the possession of the subject villa was handed over to the complainant on 14.12.2018 i.e. after the coming into force of the Real Estate (Regulation and Development) Act, 2016. Therefore, the project in question has to be treated as "ongoing project" on the date of coming into force of the Act
11. The complainant are thus entitled to interest towards delayed possession charges w.e.f. due date of possession i.e.

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12. 27.01.2015 till date of offer of possession i.e. 14.12.2018 at the rate as prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules). At present the prevalent prescribed rate of interest is 10.35% per annum. However, the respondent/builder has adjusted the delay penalty @Rs.10/- sq. ft. per month w.e.f. 27.01.2015 (due date of offer of possession) till 14.12.2018 (on which date offer of possession has been given to the complainants). Therefore, the amount calculated @Rs.10/- sq. ft. per month for the above stated period has to be adjusted against the delay possession interest. The delayed possession charges are to be calculated as per Rule 15 of the Rules ibid.
13. Further, suffice is to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainants are at liberty to file an application before the adjudicating officer under section 71 of the Act along with the enabling sections/provisions, if they so desire.

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Findings of the Authority: -

14. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes for promoter projects situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore this Authority has complete territorial jurisdiction to deal with the present complaint.

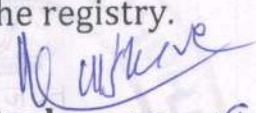
Decision and directions of the Authority:-

15. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 and as prescribed in proviso to Section 18(1)(b) of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.35% per annum

with effect from the committed date of delivery of possession of the said villa/unit bearing MAR-MD-01B in "Marbella", Sectors 65-66, Gurugram, Haryana i.e. 27.01.2015 till the date of offer of possession letter dated 14.12.2018 after adjusting the delay penalty of Rs.10/- sq. ft. per month (Rs.30,35,283/-) for the period 27.01.2015 to 14.12.2018 given to the complainants in the offer of possession letter within a period of 90 days from this order.

15. The complaint stands disposed of accordingly.

16. The case file be consigned to the registry.


N. K. Goel 17.9.19

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

[Authorised by resolution no. HARERA,
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U/s 81 of the Real Estate (Regulation and Development) Act,
2016]

Dated: 17.09.2019

Order ratified by the Authority as above.


(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.09.2019

